Stuart Price, Esq. (SBN:150439)
Price Law Group, APC
15760 Ventura Boulevard, Suite 800
Encino, CA 91436
T: (818)907-2030
E: stuart@pricelawgroup.com
Attorneys for Plaintiff,
John Dunican

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JOHN DUNICAN, an individual,

Plaintiff,

vs.

HARLEY-DAVIDSON CREDIT CORP., a Nevada Corporation; and DOES 1 - 10,

Defendant(s).

Case No.:

COMPLAINT AND DEMAND FOR JURY TRIAL

1. **TCPA, 47 U.S.C. § 227; and**
2. **CAL. CIV. CODE § 1788 *et seq*.**

(Unlawful Debt Collection Practices)

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, John Dunican ("Plaintiff"), through his attorneys, alleges the following against Defendant, Harley-Davidson Credit Corp. ("Defendant"):

INTRODUCTION

1. Count I of Plaintiff's Complaint is based upon the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227. The TCPA is a federal statute that broadly regulates the use of automated telephone equipment. Among other things, the TCPA prohibits certain unsolicited marketing calls, restricts the use of automatic

dialers or prerecorded messages, and delegates rulemaking authority to the Federal Communications Commission (“FCC”).

2. Count II of Plaintiff’s Complaint is based upon Rosenthal Fair Debt Collection Practices Act (“RFDCPA”), CAL. CIV. CODE § 1788, which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices in connection with the collection of consumer debts.

JURISDICTION AND VENUE

3. Jurisdiction of this court arises under 47 U.S.C. § 227 et seq. and 28 U.S.C. 1331.

4. Venue is proper pursuant to 28 U.S.C. 1391(b)(2) in that a substantial part of the events or omissions giving rise to the claim occurred in this District. Because Defendant availed itself here, personal jurisdiction is established.

PARTIES

5. Plaintiff is a natural person residing in the state of California.

6. Plaintiff is a “debtor” as defined by CAL. CIV. CODE § 1788.2(h).

7. Defendant is a “debt collector” as defined by CAL. CIV. CODE §1788.2(c), and sought to collect a consumer debt from Plaintiff.

8. Defendant is a debt collector with its principle place of business located at 3850 Arrowhead Drive, Carson City, Nevada 89706, and can be served through its agent, CT Corporation System, at 818 West 7th Street, Suite 930, Los Angeles, California 90017.

9. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

10. In or around September 2016, in an attempt to collect on the alleged consumer account, Plaintiff began receiving calls on his cellular phone number; (619) 609-6105.

11. Defendant called from the following numbers: (855) 729-4171; (844) 299-3879; (844) 299-3883; (844) 299-3881; (844) 641-2079; (844) 898-6227; (800) 757-1744; (800) 699-2848; (844) 664-7385; (800) 757-1744; and (844) 664-7384.

12. Upon information and belief, Defendant owns and operates the phone numbers.

13. On or about September 14, 2016, at 10:56 a.m., Plaintiff received a call on his cellular telephone from (844) 299-3883 and spoke with a representative; at which point Plaintiff unequivocally revoked consent to be contacted any further.

14. Despite revoking consent, Defendant called Plaintiff approximately one-hundred and five (105) times between September 14, 2016 and October 29, 2016.

15. On or about October 29, 2016, at 8:34 a.m., Plaintiff received a call on his cellular telephone from (800) 699-2848 and spoke with a representative; at which point Plaintiff unequivocally revoked consent to be contacted for a second time.

16. Despite revoking consent on October 29, 2016, Defendant called Plaintiff at 9:26 a.m., fifty-two minutes later.

17. Then, on or about November 5, 2016, at 8:12 a.m., Plaintiff received a call on his cellular telephone and spoke with a representative; at which point Plaintiff clearly and unequivocally revoked consent to be contacted for a third time.

18. That very day, Plaintiff received two more calls from Defendant at 9:23 a.m. and 10:20 a.m.

19. Between September 3, 2016 and February 26, 2017, Defendant willfully called Plaintiff on his cellular phone approximately two-hundred and seventy-five times (275) times to annoy and harass Plaintiff in the hopes that they could induce Plaintiff to pay the debt.

20. Additionally, on multiple occasions Defendant would call Plaintiff within a minute of the previous call to harass and annoy Plaintiff.

21. For example, on September 3, 2016, Plaintiff received phone calls at 11:30 a.m. and 11:31 a.m. On November 11, 2016, Defendant called Plaintiff at 9:42 a.m. and 9:43 a.m. On January 23, 2017, Plaintiff received a phone call at 9:09 a.m. and 9:10 a.m.

22. On many days, Defendant would call Plaintiff four and five times a day, even after having spoken to him.

23. Each time Plaintiff spoke with a representative of Defendant there was a brief pause prior to the representative responding. Upon information and belief, this is indicative that the Defendant is using an automated telephone dialing system.

24. Defendant called Plaintiff from a variety of area codes located in varying states in an attempt to hide its identity and further indicating the use of an automated telephone dialing system.

25. During the time of the calls and through the date of this Complaint, Plaintiff has been performing construction for his church and the constant barrage of calls have interrupted his work causing delays in the completion of the job.

26. In addition, the sheer amount of calls has made it difficult for Plaintiff to concentrate and even sleep at night.

27. Due to Defendant's actions, Plaintiff has suffered severe emotional distress, invasion of privacy, and actual damages.

COUNT I

(Violations of the TCPA, 47 U.S.C. § 227)

28. Defendant violated the TCPA. Defendant's violations include, but are not limited to the following:

    a. Within four years prior to the filing of this action, on multiple occasions, Defendant violated TCPA 47 U.S.C. § 227 (b)(1)(A)(iii) which states in pertinent part, "It shall be unlawful for any person within the United States . . . to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice — to any telephone number assigned to a . . . cellular telephone service . . . or any service for which the called party is charged for the call.

b. Within four years prior to the filing of this action, on multiple occasions, Defendant willfully and/or knowingly contacted Plaintiff at Plaintiff's cellular telephone using an artificial prerecorded voice or an automatic telephone dialing system and as such, Defendant knowing and/or willfully violated the TCPA.

29. As a result of Defendant's violations of 47 U.S.C. § 227, Plaintiff is entitled to an award of five hundred dollars ($500.00) in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B). If the Court finds that Defendant knowingly and/or willfully violated the TCPA, Plaintiff is entitled to an award of one thousand five hundred dollars ($1,500.00), for each and every violation pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

COUNT II
(Violation of the Rosenthal Fair Debt Collection Practices Act, CAL. CIV. CODE § 1788)

30. Plaintiff incorporates herein by reference all of the above paragraphs of this complaint as though fully set forth herein at length.

31. Defendant violated the RFDCPA. Defendant's violations include, but are not limited to, the following:

a. Defendant violated CAL. CIV. CODE § 1788.11(d) by causing a telephone to ring repeatedly or continuously to annoy the person called;

b. Defendant violated CAL. CIV. CODE § 1788.11(e) by communicating, by telephone or in person, with the debtor with such frequency as to be unreasonable and to constitute a harassment to the debtor under the circumstances; and

c. Defendant violated CAL. CIV. CODE § 1788.17 by collecting or attempting to collect a consumer debt without complying with the provisions of Sections 1692b to 1692j, inclusive, of . . . Title 15 of the United States Code (Fair Debt Collection Practices Act).

   i. Defendant violated CAL. CIV. CODE § 1788.17 by violating 15 U.S.C. § 1692d by engaging in conduct, the natural consequence of which is to harass, oppress or abuse any person in connection with the collection of the alleged debt; and

   ii. Defendant violated CAL. CIV. CODE § 1788.17 by violating 15 U.S.C. § 1692d(5) by causing Plaintiff's phone to ring or engaging Plaintiff in telephone conversations repeatedly; and

   iii. Defendant violated CAL. CIV. CODE § 1788.17 by violating 15 U.S.C. § 1692f by using unfair or unconscionable means in connection with the collection of an alleged debt.

32. Defendant's acts, as described above, were done intentionally with the purpose of coercing Plaintiff to pay the alleged debt.

33. As a result of the foregoing violations of the RFDCPA, Defendant is liable to Plaintiff for declaratory judgment that Defendant's conduce violated the RFDCPA, actual damages, statutory damages, and attorneys' fees and costs.

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PRAYER OF RELIEF

WHEREFORE, Plaintiff, John Dunican, respectfully requests judgment be entered against Defendant, Harley-Davidson Credit Corp., for the following:

A. Statutory damages of $500.00 for each and every negligent violation of the TCPA pursuant to 47 U.S.C. § (b)(3)(B);

B. Statutory damages of $1500.00 for each and every knowing and/or willful violation of the TCPA pursuant to 47 U.S.C. § (b)(3)(B) and 47 U.S.C. § (b)(3)(C);

C. Statutory damages of $1000.00 pursuant to the Rosenthal Fair Debt Collection Practices Act, CAL. CIV. CODE §1788.30(b),

D. Actual damages pursuant to CAL. CIV. CODE § 1788.30(a);

E. Costs and reasonable attorneys' fees pursuant to the Rosenthal Fair Debt Collection Practices Act, CAL. CIV. CODE § 1788.30(c), and

F. Any other relief that this Honorable Court deems appropriate.

Respectfully submitted this 13th day of March, 2017.

PRICE LAW GROUP, APC

By:/s/ Stuart Price
Stuart Price (SBN 150349)
E: stuart@pricelawgroup.com
Attorneys for Plaintiff
John Dunican